


Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

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MEMORANDUM

To: Julia D'Alesandro, Audit Dept.
From:  Brent Johnson, General Counsel
Re: Jail Fees
Date: October 16, 2002

I have finally had an opportunity to review your e-mail of September 20, 2002 asking two questions about the propriety of a county jail charging a municipal court a nightly fee for defendants that are housed at the jail. As I understand the situation, the Sanpete County jail is charging local cities \$25.00 per night for each defendant held within the jail on a justice court commitment order. Because of the fee, there is a reluctance by judges to issue commitment orders and/or warrants because of the cost to the cities. The first question relates to whether a judge should make a decision not to issue a warrant because of the cost to the city. The second question relates to whether it is appropriate for the county to be charging municipalities for these costs.

The first question is somewhat difficult to answer because of the many potential variables. According to the Code of Judicial Conduct, a judge is to apply the law and perform his or her duties without any social, political or other improper influences. It is therefore unethical for a judge to fail to order a defendant to jail based solely on the fact that the executive branch has informed the judge that it is too costly to incarcerate defendants. The judge's decision must be based on the law and the facts presented in an individual case and a judge has duty to impose jail if that is the appropriate sentence.

Although judges have this ethical obligation, they are often presented with a difficult choice. If a judge sentences a defendant to jail, or issues a warrant for a defendant, and the jail then refuses to hold the defendant because the city has refused to pay the costs, the judge may be faced with orders that have no consequence. The judge could attempt to hold jail personnel in contempt for violating the judge's orders, but most judges are reluctant to challenge allied agencies. In response, judges begin to look at other ways to ensure that defendants are punished and/or caught. In some circumstances, they may not have any remedies and therefore they make decisions based on the lack

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of a perceived remedy. This is certainly not an ideal situation, but it is difficult to declare that a judge's actions are "wrong" under the circumstances. In my opinion, a judge should never refuse to issue a warrant or commitment order when the facts justify such actions. I also believe that a judge should enforce his or her orders once issued, even to the extent of holding law enforcement in contempt. However, as stated, a judge is probably not wrong for acting contrary to my opinion.

The question of whether a county can charge cities for incarceration costs is difficult because it is ultimately not the judiciary's issue. The judiciary has the responsibility to issue orders and ensure compliance with those orders. The issue of jail fees charged from the county to the city is one that must be raised by the executive branch of the city. In some circumstances, judges have been asked to order a defendant to repay jail costs. I have previously issued an opinion, a copy of which is attached, that states that this practice is questionable, but is not clearly a violation of the Constitution. It is therefore possible that judges could order defendants to repay such costs.

Although this is ultimately an issue that the cities must resolve, I believe that Utah Code Ann. § 63-38-3.3 prohibits the counties from charging cities for the jail services. Although this statute is somewhat ambiguous, it generally prohibits state and county officers from charging other entities for services that the state or county offices are normally required to provide. I also believe that there is a double taxation issue because residents of the affected cities will be taxed twice for the same services. They will be taxed as county residents and subsequently taxed as municipal residents. However, the double taxation is not an issue that can be addressed by the judiciary in this manner.

If you have any questions about this, please feel free to let me know.